

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WISC.	
FILED	
JUL - 7 2005	
AT	O'CLOCK
SEERON B. NEDILSKY	

LARRY A. PIATEK,

Plaintiff,

Case No. 05-C-697

v.

MICHAEL SCHMITZ, DAVID GRAVES,
ELIZABETH PETERS and HEALTH
PROFESSIONALS, LTD.,

Defendants.

OPINION AND ORDER

Larry Piatek, a prisoner in state custody, is suing three individuals and Health Professionals, Ltd. for violating his civil rights. He is seeking relief pursuant to 42 U.S.C. § 1983. Piatek has also requested leave to proceed in forma pauperis. See 28 U.S.C. § 1915.

In his affidavit of indigency Piatek claims to have no income and only \$170.00 in savings. Yet, the statement of his prison accounts filed with his Complaint shows that his average monthly account balance for the past six months has been \$546.59 and that the total balance for the past six months equals \$3,279.54. Given these amounts, the court finds that Piatek is able to pay the filing fee in full. Therefore, his "Petition for Leave to Proceed in Forma Pauperis" (filed July 5, 2005) IS DENIED and this action will be dismissed.

Granting Piatek leave to pay the filing fee in full would be futile in that he admits in his Complaint that he has not exhausted his administrative remedies. The Prison Litigation Reform Act requires that a prisoner must exhaust all administrative remedies before bringing a civil rights suit. See 42 U.S.C. § 1997e. See also Pozo v. McCaughtry, 286 F.3d 1022, 1023 (7th Cir. 2002).

Because Piatek has not established that he is entitled to proceed without prepayment of fees and costs, the court ORDERS that this action is dismissed without prejudice.

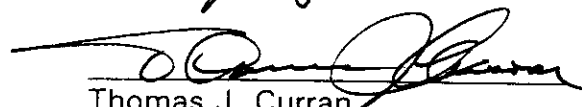
IT IS FURTHER ORDERED that the Clerk of Court shall enter a judgment of dismissal as a separate document. See Federal Rule of Civil Procedure 58. This judgment shall provide that:

Plaintiff Larry Piatek brought this action against Defendants Michael Schmitz, David Graves, Elizabeth Peters and Healthcare Professionals, Ltd. before the court, the Honorable Thomas J. Curran, District Judge, presiding, and the Plaintiff having failed to pay the filing fee,

IT IS ORDERED AND ADJUDGED

that this action is dismissed without prejudice.

Done and Ordered in Chambers at the United States Courthouse,
Milwaukee, Wisconsin, this 7th day of July, 2005.


Thomas J. Curran
United States District Judge